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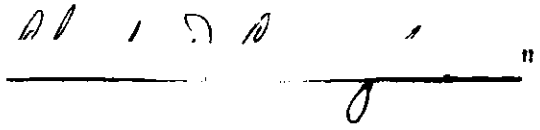

POLICIES GOVERNING THE INSTALLATION OF OVERSIZED UTILITIES WITHIN RESIDENTIAL SUBDIVISIONS AND THE EXTENSION OF UTILITIES TO OUTLYING SUBDIVISIONS

A THESIS

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CHAPTER I

INTRODUCTION

Municipalities which operate utility systems are often confronted with the problem of providing water and sewerage service to new residential subdivisions. Moreover, it is a rare community indeed in which the new development grows steadily outward from the fringes of the old. The more usual picture is of rather spotty development with some subdivisions built close in and others far out beyond many blocks of vacant land. Because the community must continue to meet the needs of its increasing number of citizens, it must cope with the problem of providing services to these new areas. The methods by which the municipality makes provisions for water and sewer lines within new nearby residential areas and for extension of lines to outlying developments can have a positive effect on land subdivision development.

The problems.--When a new residential subdivision is planned in an area which promises to have growth beyond, certain facilities such as water and sewer lines must be installed within the subdivision with a capacity greater than that required for the subdivision alone in order to take care of future needs. For example, a land developer may desire to construct a subdivision at the fringe of a developed section of the community. His own development may require six-inch water lines and eight-inch sewer lines. The municipality may, however, foresee the

need for expansion beyond the area and require that water lines be built of ten-inch size and sewer lines of twelve-inch size. Assuming that the developer must pay for the usual costs of normal subdivision improvements, the problem of allocating and arranging payment of the excess costs which are involved in the requirements for oversized capacity must be resolved. The procedures which the municipality adopts in providing for oversized capacity must insure that adequate capacity is built into utility lines at the time of installation so that they will not have to be replaced at a later date.

A city also faces a problem when residential development occurs some distance beyond its developed section. Although the developer of an outlying subdivision may be required to provide all improvements within his subdivision, the problem of financing of water and sewer lines across undeveloped land becomes of major concern. If the developer of the outlying subdivision pays for these extensions and the intervening land as it develops makes use of these lines, should the later comer bear a portion of the original developer's costs? A community which is facing a problem of premature subdivision activity may find that it could discourage outlying development by requiring the developer to pay all such costs. On the other hand, it may find it desirable to effect a policy whereby the original subdivider pays the costs of utility extensions and is reimbursed by charges against the intervening property owners. If such a policy is desired, the municipality must attempt to find an equitable formula for apportioning the costs of these utility extensions.

The seriousness of the problems involved in providing both oversized capacity and utility extensions varies among communities. A city that is growing rapidly, with residential subdivisions being built in scattered areas, may be continuously faced with the problem of making adequate provisions for utility services. On the other hand, a city which is growing slowly and experiencing little subdivision activity may not be greatly concerned with this problem. However, if only one subdivision were to develop over a ten-year period and this particular subdivision happened to be in an area some distance removed, the problem of providing water and sewer service would arise.

Purpose and scope.--It is the purpose of this study to set forth and discuss various methods which have been or may be used in providing for oversized capacity within new residential subdivisions and extensions of utility lines to outlying subdivisions. As a result, possible improved methods will be suggested. Although the problem deals with practices of municipalities, it also has application to other political units which operate water and sewerage systems.

Information for this study was secured by a survey of literature on the subject, a review of approximately 200 subdivision regulations, correspondence with municipal officials and advisory agencies, an analysis of court cases dealing with the several phases of the problem, and an inquiry to leagues of municipalities by the Georgia Municipal Association.

CHAPTER II

PROVIDING FOR OVERSIZED CAPACITY IN WATER AND SEWER LINES

Sound municipal policy should provide that water and sewer lines in new residential subdivisions be of sufficient size at the time of original installation to serve future development. Since this development may occur beyond the subdivision, it is frequently necessary to build utility lines of greater capacity than that required for a particular subdivision alone. The problems encountered in providing for this oversized capacity should be carefully considered before definite procedures are adopted by the municipality.

Recognition of The Problem

It is important that the need for constructing oversized capacity be recognized. Once a procedure has been established for dealing with this problem, it should be formally adopted and made a matter of public policy.

A number of municipal advisory agencies and officials have recommended that the municipality recognize the problem of oversized capacity and establish operating procedures. The American Society of Planning Officials has urged that the municipality set forth in its subdivision ordinance a statement of policy. In a Planning Advisory Service report, it was stated:

> . . . in all communities a policy statement is needed on how costs for improvements larger than those required to serve only the subdivision will be shared between developer and local government.
>
> This problem has long been a bone of contention between public planning agencies and subdividers. The viewpoint of subdividers as expressed in their publications, has slowly swung from opposition to the installation of any improvements at the developer's expense to concern about requirements to install oversize improvements. Planning agencies, too, have found satisfactory solutions to only a few of the problems.
>
> The policy statement should tell how the cost of installing oversize improvements is to be shared for each type of improvement (1).*

A state municipal league has also advised its member municipalities to set forth a policy on oversize utilities in its subdivision regulations. The Michigan Municipal League has said:

> . . . the ordinance should be written so that the subdivider will only be responsible for that improvement which actually meets the needs of his particular subdivision. Ordinarily, he should not be required to pay for the installation of an oversized main which is needed by the municipality to serve an area larger than the subdivision itself (2).

In a recent text on municipal public policy, Professor Donald H. Webster argued for municipal sharing of the costs of excess investment in utility lines.

> In some instances, . . . cities have found it to be sound policy to participate in the initial cost of installation or construction to provide improvements of a type or quality above minimum standards in order to save the city in costs of long-term maintenance. It would obviously be unreasonable to require a developer to install unusually large water mains for supplying water to an adjoining area (3).

The International City Managers' Association also has recommended municipal participation in the costs of oversized water lines. It makes

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*Bibliographical references appear at the end of each chapter.

this recommendation for those concerned with the formulation of municipal policy: "Subdividers of new land areas should install water mains large enough to supply future needs or to meet fire hazards, although municipal sharing of some of the additional costs would be justified" (4).

Mr. H. H. Stirman, public works official, summarizing his recommendations for the provision of utilities in residential subdivisions, stated:

> There must be coordination between the developer, the planner and the Public Works Department to see that adequate facilities are provided for the subdivision as well as any potential area beyond the subdivision. Any increase in size of facilities beyond the necessities of the subdivision are the responsibility of the municipality, and should be paid for by it (5).

It is commonly recognized that in many instances oversized capacity must be planned for and provided. Before making a decision as to how this capacity should be provided, however, it is well for the municipality to consider some of the legal principles involved.

Legal Principles

Since the problem of oversized capacity is presented when the municipality is concerned with the future growth of areas beyond a particular subdivision, it is assumed that the municipality has some jurisdiction over those areas. Likewise, it is assumed that there is jurisdictional authority to provide water and sewerage in those areas.

The courts have recognized the obligation of the municipality to expand its utility system in accordance with increased demands from its citizens. In a New Jersey case which concerned water requirements for community residents, the court said:

> A public water company is under a duty as a public utility to supply water to all inhabitants of the community who apply for the service and tender the usual rates. The obligation includes the establishment of a distributive plant adequate to serve the needs of the municipality and the enlargement of the system to meet the reasonable demands of the growing community (6).

It would appear from this reasoning that the responsibility for providing oversized capacity or for replacing inadequately sized utility lines within an area served is primarily that of the municipality.

After a municipality has begun providing service to an area, it is doubtful that it could legally discontinue such service. In a discussion of water extension problems at a meeting of the California Section of the American Water Works Association, it was stated:

> Of special importance in consideration of service to fringe areas is the apparent legal obligation of a municipality to assume full responsibility for maintaining service to an area once service has been initially provided. It is of particular importance that new lines installed in fringe areas be large enough to meet future demands (7).

Planning Considerations

Before making a decision on where and how oversized capacity will be provided, the municipality should answer the following three questions:

1. Where should residential development be encouraged?
2. What are the municipality's financial limitations?
3. What is the proper balance between private and public interest?

Where should residential development be encouraged?--Since water and sewerage service is a requisite concomitant of modern urban growth, these two services will provide a tremendous force to guide the location of residential

subdivisions. Where the city anticipates that residential development is likely to occur beyond a particular subdivision, it must insure that a capacity sufficient to provide for these future demands be built in utility lines within the subdivision at the time of their installation. Its plans for oversized capacity must therefore be based on its projections of future land use.

What are the municipality's financial limitations?--Even though the responsibility for providing oversized capacity may seem to be that of the municipality, there is the question of its financial ability to do so. Just as any business has only a certain amount of capital which it can tie up in unused or idle capacity, so also a municipality operating a water or sewerage system cannot afford to place its funds indiscriminately into oversized capacity. Although there may exist a desire to over-expend in this regard, the sheer financial inability may limit such operations. From the standpoint of the municipality, if it follows a procedure of paying for all of the excess costs involved, it may within a period of several years find that it has depleted its funds to such an extent that normal operation may have to be curtailed.

If it cannot meet these financial obligations, perhaps it may resolve the dilemma by requiring the developer to pay for the excess costs involved and to be reimbursed as outlying development takes place.

What is the proper balance between private and public interests?--In addition to considering what the municipality would like to do or what it is financially able to do in the way of providing oversized capacity,

there is the problem of developing a financial policy which will be equitable. As a matter of public policy, it is only fair that neither the private developer nor the municipality be unjustly penalized in the apportionment of costs.

Land developers have argued that no policy is equitable which forces them to pay for oversized utility lines. They say that they cannot afford these added costs, and the imposition of this burden may raise the price of building lots to unreasonable levels. Such practice, it is said, may lead to a shortage of buildable lots in the community and force out desirable development (8).

Perhaps a compromise solution may be effected. The developer may be required to pay for the extra costs imposed in building water and sewer lines of oversized capacity and subsequently be reimbursed as development occurs beyond his subdivision. Such a practice may discourage premature subdivisions and at the same time offer more equitable distribution of development costs.

Since there are many questions and conflicts which must be resolved, each community's particular local problems must be considered as it adopts its own policies for providing oversized capacity. Local conditions must determine whether the city chooses to pay for all excess costs, whether it forces these costs on the land developer, or whether it decides on some course of action within these two extremes.

Surveys of Municipal Practices

In an attempt to discover prevailing municipal practices in the allocation of land subdivision improvement costs, the Urban Land Institute

conducted a survey in 1955 of practices in American cities with populations of 50,000 or more and in urban counties (9). The following question pertaining to oversized improvements was asked: "Does the developer pay all or part of cost of streets or utilities larger than those required for his development alone?" A total of 90 cities answered this question. Twenty six cities reported that the developer paid for all of the excess costs involved, 23, that he paid for part, and 41, that the city paid the excess costs. A total of 43 urban counties responded to the questionnaire. The following question was asked: "Does County pay additional cost for utilities outside the subdivision when larger installations are needed to serve the outside territory?" Four counties reported that they paid the additional costs, 13 paid part, and 14 paid none of the additional costs. Twelve of the counties did not answer the question or considered it not applicable.

A survey of North Carolina cities with populations of 10,000 or more was conducted by the Institute of Government of the University of North Carolina in 1956. Answers were obtained from 26 of the 30 cities surveyed. In 23 of the 26 cities, or 87 per cent, the city paid all or part of the extra costs of larger water and sewer lines that were necessary to serve areas other than the one being developed (10).

Another survey was made by the North Carolina Institute of Government in the fall of 1958 (11). In 19 of 22 cities of more than 10,000 population which answered the questionnaire, the city paid for the excess costs of oversized water and sewer lines.

Methods of Financing Oversized Capacity

Municipal policy for the financing of oversized capacity has been of three principal types:

Payment of costs by municipality;

Payment of costs by developer;

Payment by developer with reimbursement as outlying development occurs.

Payment of costs by municipality.--The following are examples of municipalities that have provided by ordinance or resolution for payment of extra costs imposed by requirements for oversized capacity.

The City of Austin, Texas, has made the following provision by resolution:

> Where water or sewer lines of certain sizes are required to adequately serve an approved subdivision within the City, and larger lines are installed within the subdivision at the request of the City, if the cost of the line as installed has been approved by the City, the City will pay the extra cost incurred in construction of the larger lines, based on City estimates of the cost of the smaller lines (12).

The City Commission of Adrian, Michigan, adopted a schedule of public improvements and methods of financing to apply to all subdivision plats to be approved after January 1, 1959. The following policy concerning oversized improvements was placed in effect by resolution:

> If in any instance the City should decide that it is necessary to install a larger water main, sewer facilities, or greater width of street, it will bear a pro-rata share of the cost of the particular improvement provided duly authorized funds are available (13).

Mason, Michigan, has adopted by subdivision ordinance a policy which provides that the city will pay for oversized water and sewer

mains. The pertinent provisions of the ordinances state:

> Section 5.2 The proprietor shall at his own expense whenever there is within reasonable distance a water main or water mains where a suitable connection is feasible, provide a complete water works system with a minimum of six-inch mains;
> PROVIDED, that if the City Council shall require that a larger size main be provided that it shall be provided and the additional expense thereof paid by the city.
> Section 5.3 The proprietor shall at his own expense, whenever there is within reasonable distance a sanitary sewer outlet or outlets and a connection is feasible, provide the subdivision with a complete sanitary sewer system which shall connect with such outlet or outlets and that such system shall be provided with a minimum of eight-inch mains;
> PROVIDED, that if the City Council shall require that a larger size main shall be installed that it shall be provided and the additional expense thereof paid by the City (14).

The City of Corpus Christi, Texas, has provided in its subdivision ordinance that it will pay the additional costs of excess capacity where such funds are available:

> Where it shall be determined by the Director of Public Works that larger or deeper mains or lines are required in order to provide for the future extension of the sewer and/or water utility system beyond the limits of the subdivision in question, the City shall assume the responsibility for any additional costs involved. In the event City funds are not currently available to pay for such larger or deeper mains or lines as may be required, arrangements shall be made for the developer to install these improvements and be reimbursed by the City (15).

The cities of Savannah, Georgia, and Greensboro and Durham, North Carolina, pay for excess costs involved in providing oversized capacity. DeKalb County, Georgia, "usually" pays for such costs.

It was reported by the state leagues of municipalities in New Mexico, Texas, and Michigan that cities in those states generally assume the costs of oversized capacity.

Payment of costs by developer.--There are few instances of municipal policy which requires the developer to pay for the excess costs involved in oversized capacity. State leagues of municipalities have reported, however, that this is general practice in the states of Utah, South Carolina, and Maine.

Payment of costs by developer with reimbursement as outlying development occurs.--Only one city was found which has in effect a policy of reimbursement.

Clarksville, Tennessee, has provided by ordinance that where water and sewer lines must be built of a size larger than "standard residential" (six-inch water and eight-inch sewer) the developer shall pay for the excess costs and be reimbursed from water and sewer revenue charges over a period of seven years. In the case of standard sized lines he may be reimbursed up to 75 per cent of the total amount he has spent. For the excess he has spent in providing sizes above standard, he may be reimbursed up to 100 per cent. The payments are derived from 60 per cent of the gross water revenue and 50 per cent of the gross sewer charge revenue which is obtained from the area served by the lines.

Other possibilities exist for obtaining reimbursement from development of property beyond. Mr. Calton Heckerman, Jr., described a system of reimbursement which has application both to oversized capacity and to utility extensions, and is discussed on pages 31-32 in the succeeding chapter.

Perhaps a reimbursement procedure is worthy of consideration by other communities. The land subdivider may be justified in complaining where the city imposes arbitrary or unreasonable requirements for improvements which will clearly serve other developments. If, however, expectations of further growth necessitate an oversized installation and provisions are made whereby the developer may recover these excess costs as the area beyond develops, then it may not prove unreasonable to require the developer to pay for the additional cost at the time of original installation. The municipality may find that this is a desirable method of providing a degree of restraint over premature subdivision activity. There is a probability that the developer will be certain of the nature of the land market before he attempts to subdivide.

Summary

Many municipal advisory agencies have recognized the importance of providing oversized capacity in new residential subdivisions. Where growth occurs and inadequate facilities have been installed, the municipality must bear the responsibility of replacements. The policies which a municipality adopts governing oversized capacity will influence land subdivision. It should, therefore, consider its policy in the light of these three questions:

1. Where should residential development be encouraged?
2. What are the municipality's financial limitations?
3. What is the proper balance between private and public interests?

The methods by which oversized capacity is financed fall within one of the following:

Payment of costs by municipality;

Payment of costs by developer;

Payment by developer with reimbursement as outlying development occurs.

The most widely used method is payment of excess costs by the municipality. While land developer may object to initial payment for oversized utility capacity with subsequent reimbursement, experimentation with reimbursement systems may provide the most desirable solution. Few cities covered in this study have adopted a system of reimbursement in their handling of oversized capacity. The subject of reimbursement for the extension of utility lines to outlying subdivisions will be analyzed in detail in the following chapter. Some of the practices disclosed there may be applicable to oversized capacity as well.

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CHAPTER III

THE EXTENSION OF WATER AND SEWER LINES TO OUTLYING SUBDIVISIONS

The policies of a municipality for the extension of water and sewer lines to outlying subdivisions may have a marked effect on the character of land development. Such policies should be considered as a method of control over land subdivision activity.

This chapter will set forth basic planning considerations, review municipal treatment which does not involve reimbursement, and analyze assessment and reimbursement policies.

Planning Considerations

In its role as the operator of water and sewer utilities, the municipality should strive to extend these services into new areas as they are needed. It has an added duty, however, of exercising control over land development. It must strive for a policy which will keep pace with land development and which will be equitable in its operation. Neither public nor private interests should gain at the expense of the other.

Since water and sewer lines which are extended to outlying subdivisions will traverse land which may later be developed, it is necessary for the city to consider this future growth and the subsequent utilization of these utility lines. If they are so located that they can be tapped as residential growth occurs, growth will be encouraged.

If, however, by deliberate or improper planning they are so located that they cannot be made available for use in the areas concerned, development will be retarded.

Careful consideration should be given to the question of the location of new utility lines and the areas the city intends to serve. As in the case of oversized water and sewer lines, so also in extending utility lines across undeveloped property, the municipality must determine the areas within which it expects to provide utility services, both in the present and future.

> Although a municipality probably cannot refuse an application for service within its service area, the courts have held that it is within the power of the municipality to set the particular rules and regulations under which service will be given (1).

The practices which municipalities follow in making provisions for extensions of utility lines are varied. Each method, in turn, affects the course of land development in its own unique fashion. Whether one particular method is the best for a particular city is a matter for that city alone to determine. Once it does settle upon a course of action, however, a clear understanding of what this course is and of what is required of the parties affected -- developer, homeowner, municipality -- will help to promote orderly land development.

Municipal Practices Involving No Reimbursement

In determining a policy for payment for extensions of utility lines to outlying subdivisions, some cities have not found it necessary or desirable to refine their policy beyond one or two alternatives: the city either pays the costs at the time of installation, or requires that the developer do so.

If the city pays the costs of these extensions, it might legitimately be asked: who does actually pay for them? If the expenditures are to be justified on the basis of revenue expected to be derived ultimately from intervening development, the municipality must treat this investment in additional lines as one which will be utilized economically during some future period. During the period this investment lies idle, there will be carrying charges which should be computed as a part of the cost. The general public, in effect, will have subsidized the development of land in the outlying areas if the intervening land does not build up as expected. Both the land subdivision and the intervening land are, in many instances, beyond the corporate limits outside the taxing jurisdiction of the city. If municipal policy penalizes the city dweller to the benefit of his suburban neighbor, it should be carefully evaluated for its overall desirability. Such a policy might conceivably be followed under certain conditions where financing represented no particular problem, where development is occurring relatively close to existing utility lines, or where it is desired to expand the utility service areas at a rapid rate.

Some cities require the developer to pay for all extensions. If the developer is to continue in business, he must be able to include these costs as a part of the costs of doing business, or else be in a position to subtract such costs from his profits. In the first instance it will be the home-owner and in the second instance the developer who will be partially subsidizing development of the intervening area.

Land subdividers have objected strenuously to a policy under which the municipality benefits at the expense of the original subdivider. A spokesman for the Urban Land Institute made this point:

> . . . if the municipality receives later revenue from the public water system and sewerage connections that the developer installs at his own expense, then [it] has exceeded the bounds of equity and reasonable requirements unless the developer receives a rebate from the municipality's income out of the capital outlay that it has avoided and that he has provided (2).

Similar valid objections exist when the owner or developer of intervening land is able to make a profit due to the increase in value of his land which has come about from expenditures of the original subdivider.

There is a very basic question, of course, as to whether the outlying developer has not already recovered his costs of development when he sells his lots. In fact, it is most likely to be the homeowner in the outlying subdivision who is paying the cost of the utility system extension.

If the practices which are followed by a municipality do penalize one group at the expense of another, attention should be directed to alternate possible practices which offer the possibility of more nearly equitable solutions.

Analysis of Assessment and Reimbursement Policies

In an attempt to lessen the amount of capital investment in the utility system or to divide the costs of development more equitably among those benefited, some municipalities have adopted policies under

which the intervening property owners are charged for a portion of the costs of utility extensions. These policies may be used in cases where either the city or the developer pays for the original cost of the extension. Such charges may be made either at the time of installation or as development takes place.

In order to have legal status, it appears that any arrangements which a municipality may make for the reimbursement of money paid for utility installations must be based on a formal written contract. In the case of Gilbert v. City of Martinez, 313 P. 2d 139 (California, 1957) the court held that the absence of a contract between the developer and city precluded reimbursement for excess amounts paid for a water line. Although the city had made contracts with other developers which were valid, its administrator's interpretation of policy had no legal effect without a contract.

Other court action developed in DeKalb County, Georgia, when county officials attempted to force a developer to pay a portion of the cost of a sewer line to the original developer of outlying property. The outlying developer had paid a sum of approximately $4,000 in extending a sewer line. An informal agreement with county officials (who operate both water and sewerage systems) called for subsequent developers in the intervening territory to pay the original developer a portion of the cost of the sewer line. County authorities refused to approve a plat for a subdivision which would have utilized the sewer line because the subdivider did not pay his share of the cost of the sewer line to the original developer. The second developer

brought suit in Superior Court and asked for a mandamus ordering approval of the plat without such payment. The petition claimed that no legal basis existed for refusal of the plat or for the payment of any sum of money since the sewer line was owned by the County and there was no formal policy requiring such payment. The court agreed with this reasoning and ordered the subdivision plat approved (3).

Although the particulars of reimbursement policies are not set forth, two state leagues of municipalities reported that some type of reimbursement system is generally followed in their states. The Texas Municipal League reported that most cities in that state follow some form of reimbursement procedure based on the amount of subsequent development. General policy in that state is:

> . . . to require the subdivider within the area under consideration to pay the cost of the minimum extension through the undeveloped area, with the same to be refunded on a pro rata basis at the time the intervening area should be developed. . . The cost would be assessed against such future subdividers (4).

The League of California Cities reported that it is general policy in that state for the subdivider to provide for the excess length of utility lines and be reimbursed over a period of years for a portion of the initial cost.

The policies by which municipalities make provisions for charging intervening property and effecting reimbursement may be examined under the following categories:

State enabling legislation authorizing reimbursement;

Determination of beneficiary;

Determination of amount to be reimbursed;

Methods of apportioning charges;

Methods of collecting and disbursing funds.

State Enabling Legislation Authorizing Reimbursement

In adopting reimbursement policies, most municipalities have relied upon their general governing powers, rather than upon any specific enabling legislation. In the last few years, however, some state acts have been passed which pertain to reimbursement procedures.

The State Legislature of Indiana, in 1955, adopted legislation which authorized Municipal Boards of Public Works in that state to enter into reimbursement contracts with developers who install sewerage systems which are later utilized by property owners outside the original development. The owners of real estate who did not contribute to the cost of the original installation would be charged as their property is connected to the system. Such charges are to be refunded to the original developer. Section 93 of that act (the complete act appears in Appendix A) empowers the municipal Boards of Public Works to:

> . . . contract with owners of real estate for the construction of storm, sanitary or combination sewers, pumping stations and disposal plants within such city or within four (4) miles from its corporate limits, connecting with the public sewerage system, to serve the area in which the real estate of such owners is located, and to provide, for a period of not to exceed fifteen (15) years, for the reimbursement of such owners and their assigns, by any owner of real estate who did not contribute to the original cost of such sewers, pumping stations, or disposal plants, and who subsequently taps into or uses the same or deposits sewage therein, of a fair pro rata share of the cost of the construction of said sewers and facilities, including not only direct users but also users on any lateral sewers connecting thereto, subject to such reasonable rules and regulations as the Board may provide or contract, and notwithstanding the provisions of any other law.

The act does not set forth specific formulae by which reimbursement contracts should be written. This feature was noted by Mr. Paul W. Phillips, City Attorney of Fort Wayne, Indiana, who assisted in drafting the act.

> The lack of any provision in this act pertaining to specific formulae by which the fair pro-rata share must be computed is deliberate. It was felt that this would be too complex and might seriously restrict the use of new ideas for methods of working out fair reimbursements, as well as ignoring the fact that each contract would have peculiar circumstances of its own which are unforeseeable (5).

An act similar to that of Indiana was passed by the Legislature of the state of Washington in 1959. Provisions are included for reimbursement for water and sewer facilities. The applicable section states:

> Section 1. The governing body of any city, town, sewer district, water district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary or combination sewers, pumping stations and disposal plants, water mains, hydrants or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or within four miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those connected directly thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.

In the Washington act, just as in the Indiana act, no specific formulae for reimbursement are given. The Association of Washington

Cities has provided sample contracts based on the act to be used by municipalities in their state. A copy of the sample agreement is included in Appendix B.

One further example of state legislation pertaining to reimbursement procedures is an Oregon statute which applies to water districts. The act provides:

> . . . that if water districts have required a person to pay the cost of extending a water main adjacent to property other than his own so that water service is provided without further extension of the main, the owners of the other property are required to refund to the persons paying the original cost a prorata portion of the cost of the extension. This right of refund continues for 10 years after the date of installation of the extension.

Although a reimbursement policy apparently does not have to be based upon specific enabling legislation, the standards by which it is to be administered must be written into law. Courts have generally concurred in the necessity for the provision of adequate standards by which municipal agencies are to be guided in the administration of land use controls.

In a court case which involved a reimbursement policy on water mains, the court found that such policy was based on no apparent standards, and was therefore illegal. This decision was rendered in the case of Reid Development Corporation v. Parsippany-Troy Hills Township, 10 N.J.L. 229 (New Jersey, 1952). The city endeavored to effect a plan for reimbursement of a portion of the costs of utility extensions to the plaintiff corporation. The court pointed out that while the municipality was obliged to exercise discretion as to the extension of water mains, governed by need and economic considerations,

this discretionary authority "must be fairly and reasonably used." The opinion given here was that the absence of any standards by which impartial action was assured amounted to an arbitrary assumption of power by the local authority. The reimbursement procedure established was therefore null and void.

Determination of Beneficiary

It is significant that all reimbursement policies found in this study provided that the original subdivider who paid for the excess lengths of utility lines was the beneficiary of any subsequent refunds. The unanimity of treatment in this regard merits closer examination, especially in view of court opinion. As pointed out above, a very real question is presented when a determination is to be made of exactly what individual or groups of individuals have paid excess sums and deserve reimbursement.

Where developers have sold lots and represented that the price of the lot included all improvements, courts have held that compensation had already been received by the subdividers (6). In the case of Country Club District Service Co. v. Village of Edina, 214 Minn. 26, 8 N. W. 2d 321 (Minnesota, 1943), the subdivider had sold off lots which had been improved and he had claimed that the price of such lots included the improvements. The court ruled that the subdivider had divested himself of any claim to ownership of the improvements, and could not thereafter claim reimbursement.

Another court case, which involved the annexation of a subdivision, has application also to the ownership rights of the subdivider.

The City of Danville, Virginia, had annexed a tract of land which included a subdivision constructed by the defendant corporation. A claim was made by the corporation for costs of improvements in the subdivision which had been annexed. On appeal, the court ruled against the claimant, stating:

> . . . when the water mains, pipes, etc., were constructed by the plaintiff /defendant in court of appeals/ as an inducement to the purchase of its lots, the plaintiff thereby dedicated said mains and pipes to the use of the lot owners, and has no right to claim adverse ownership or remove same without such lot owner's consent.
>
> When these residents bought their lots, they also paid a sum which represented their contribution as owners of the lots to the reimbursement of /the original developer/ for the cost incurred in installing the improvements (7).

It would therefore appear that if utility lines are to be extended by an outlying developer and he is to secure reimbursement from subsequent developers, a contract which establishes such a claim would be necessary. In many respects, the logical beneficiary of any reimbursement policy would appear to be the lot owners in the outlying subdivision.

Determination of Amount to be Reimbursed

An important consideration for the outlying developer is the determination of the amount for utility extensions which will be subject to reimbursement. Most of the reimbursement policies in this study did not reveal the precise method by which the amount considered "excess" and subject to refund were calculated. Two cities, however--Glendale, California, and Raleigh, North Carolina--consider the cost of the utility extension to the edge of the property line

of the outlying subdivision as being subject to reimbursement provisions. A variation of this method would be to limit the amount to be reimbursed to a certain percentage (for example, 90 per cent) of this cost on the theory that the outlying developer should assume at least a portion of the cost of the extensions.

Both of the above methods have the advantage of simplicity, since the amounts to be reimbursed can be readily calculated. If the objective of a reimbursement policy, however, is to distribute the costs of utility extensions among the property owners who are benefited, a reasonable determination would have to be made of how much of these costs the outlying developer should pay and how much he should expect to be reimbursed from other property.

Many cities pursue a policy of allowing a certain number of feet of "free" utility extensions to an outlying subdivision. One method is to provide funds for extensions equal to perhaps four times the annual revenue to be derived from customers the lines will serve. Another method is to provide a certain number of feet of extension for each new utility customer to be served. An example of the latter method permits 150 feet of water main extension for each new water customer (8). A new subdivision with 100 homes would then be allowed 15,000 feet of water line which the city would pay for and justify on the basis of additional revenue to be received. If the subdivision required 20,000 feet of water line, the subdivider would pay for the remaining 5,000 feet and this cost could be used as the basis for subsequent reimbursement. If the formula for "free" extensions is

computed on a true capitalization basis, and represents a fair figure for expansion of the utility system, this method may prove to be an equitable one for dividing the costs between the private developer and the general public.

Method of Apportioning Charges

If intervening property is to be charged for the water and sewer lines which have been laid down at the expense of others, an important question to be answered is on what basis each individual parcel of land is to be assessed. It would appear from court opinion that municipal authorities have a wide degree of latitude in determining a basis for apportioning charges. The method used, however, cannot be arbitrary and must be uniformly applied. In a Michigan court case which involved the determination of charges against benefited property, the court said:

> Provisions of law which make it legally impossible for the assessing officer to apportion the burden of . . . improvements according to benefits and with approximate equality are said to be arbitrary exactions and not a legitimate exercise of legislative authority (9).

Regardless of the method which is chosen to determine charges against intervening land, the method must be easy to understand and simple in operation. In a textbook on governmental accounting procedures, it was recommended that any system for charging land owners be kept free from undue complications. The recommendations of the authors concerning special assessments apply to any formula for apportioning charges to land owners.

> Many methods of distribution of costs have been put forward. Some of them become quite scientific and mathematical in nature. None of them has been widely accepted or employed because of their complications. The simpler methods are accepted by usage and are probably as equitable in the long run as those of a more scientific nature (10).

Despite the fact that apportionment formulae should be kept simple, municipalities might well abandon tradition and experiment with new methods. The experience which others have gained may prove useful as a municipality considers its own particular system. Some of the methods used for apportioning charges are:

A portion of total development potential;

Land area;

Front footage;

Service connections;

Property assessments;

Percentage of utility revenue.

A portion of total development potential.--At the University of Pittsburgh Local Government Conference on Subdivision Control, Mr. Calton Heckerman described a plan under which reimbursement for a sewer installation was based on the ultimate development of 2900 "units," in the area which the system would serve, a unit being defined as a single-family dwelling or a certain number of cubic feet in a larger type building. Reimbursement was made by later developers to the original developer who installed the system, the basis being the number of units each was erecting compared to the total of 2900 units. As an example, if a proposed tap were to service 100 units, the contribution

to the original installer of the system would be 100/2900 of the amount subject to reimbursement (11).

Land area.--In Oceanside, California, charges to intervening property owners who apply for water service are based on land area. Glendale, California, also charges intervening property served by sewer lines constructed by an earlier developer according to land area. In both of these cases, the total cost of sewer lines which traverse undeveloped land is divided by the total area of the land that can be served by the lines to determine a unit cost per acre. Each parcel of land thereupon pays a sum based on its acreage. Collections are made at the time of the service connections and refunded to the original developer during a period not exceeding ten years.

The City of Raleigh, North Carolina, follows a policy of charging the developer of land lying outside its corporate limits for all costs of utility extensions plus an additional fee of $175 per acre for water service and $125 per acre for sewerage service. The latter charges are considered to be fees for the use of the two services and are not reimbursable. The costs of the extensions are reimbursable, however, from subsequent developers as they make use of the utility lines. The subsequent developers are charged the same acreage fees which are in turn refunded to the original developer, who may recover up to the full amount of the cost of the extensions.

When charges are based on land area, inequities may result. Presumably a single-family house on a farm of 10 acres would pay the same amount as a 200-unit apartment development also located on 10

acres. A system such as this, standing alone, could produce doubtful results, but might be used in connection with others where there appear to be gross inequities.

Front footage.--A measurement of front footage is commonly used as a method of apportioning special assessments for sidewalks, street paving, etc. In its simplest form it consists of ascertaining the total frontage facing the improvement, dividing the total into the cost of the improvement to get the rate per foot, and then multiplying the frontage of each parcel by the calculated rate per foot. The front foot method has the advantage of simplicity, but it disregards other factors such as depth of lot, its shape, value, and location, and may lead to highly inequitable results. If used in connection with other methods, it may prove adaptable.

The League of Wisconsin Municipalities has recommended in a model ordinance that front footage be used as a basis for calculating charges against intervening property owners. The League has suggested that such charges be made at the time of the service connection.

Service connections.--Apportionment of costs on the basis of service connections is another possible method. A charge for this purpose is made for each new utility service connection by a number of Oregon municipalities. A report by the University of Oregon Bureau of Municipal Research and Service (12) has cited Oswego and Madras as examples of cities that follow this procedure.

The use of this method presents some administrative difficulties. For example, if the area is large and the character of the

land varies to any appreciable extent, it may prove most difficult to make advance calculations as to the number of potential service connections and, hence, the required unit charge. It may have been estimated in advance that a certain 25-acre area would develop into a subdivision of 100 single-family homes. The area could instead be developed as a cemetery or as a private estate, thus rendering useless the original calculations.

Property assessments.--An apportionment of costs based on the ratio which the assessed value of a particular property bears to the total assessed value within the area served by the extension might be used.

One inherent difficulty in adopting this system is the general nature of inequities in local property assessments. An additional consideration is the fact that property may be assessed which is still vacant and not yet put to its highest and best use. This renders even more difficult the process of making a reasonable assessment of its value. Finally, the availability of utility lines might not benefit equally two parcels of land although, because they are of equal value, they would be charged the same amount.

Percentage of utility revenue.--A method which appears to lessen the burden of apportionment on intervening property owners consists of paying the original subdivider a certain percentage of water or sewer revenue obtained from the area during a certain period. Such a system would have appeal to owners of intervening property provided their utility rates remained the same. It also would appear attractive

to the public works department of the city since revenue is being generated from an investment which a private developer has made. From the developer's standpoint, however, it is doubtful if he would be able to determine with any degree of accuracy how much of his original investment in extensions he could expect to be refunded.

Although this study did not reveal any specific reimbursement policies for utility extensions based on a percentage of revenue, such a provision is being used in the case of oversized capacity by Clarksville, Tennessee, and is discussed in the preceding chapter.

All of the above methods of apportioning charges, if used alone, fail to take into account the varying distances from the utility lines of the individual parcels of land in the territory affected. A more satisfactory solution may be arrived at by considering this factor, on the theory that the nearer a parcel of land is to a water or sewer line the more benefit it enjoys. The entire area could be mapped and divided into zones according to proximity to utility lines. Property in zones remote from the lines would bear a smaller proportion of cost under any of the above methods than contiguous properties.

Objections to using a system of benefit zones may arise from the fact that the establishment of zones of equal benefit may be difficult and may result in further inequities. The principal advantage is that recognition is given the fact that there is a relation between distance from utility lines and benefit therefrom.

Methods of Collecting and Disbursing Funds

Three methods of collecting and disbursing funds are:

Special assessment districts;

Revolving fund; and

Special refund accounting.

Special assessment district.--One method by which the collection of charges against property owners may be simplified is by placing the entire area in a special assessment district. If the area is small, this may well prove to be the most satisfactory system to administer. It may prove difficult, however, to determine the boundary limits of such a district where it involves undeveloped land. As stated in a court case, "All property benefited must be brought within the range of the assessment." (Bradley v. Asbury Park, 87 N.J.L. 293, 93 Atl. 712 (New Jersey, 1915). Land owners on the periphery of such a district might conceivably question their inclusion, especially where an assessment is made at the time of installation of the utility lines and before they have actually been utilized.

An example of this method is found in Durham, North Carolina. The City Manager reported in a letter to the author that the city follows this procedure in those areas where it can legally make such assessment. He commented: "This is the fairest solution and usually works for more orderly development of property."

Hobart Indiana, also makes use of the special assessment technique. A sewer district is established at the time a developer

builds lines which will benefit other land. The property in the district is assessed and collections are made by the City Clerk at the time a service connection is made and refunds thereupon made to the original developer.

Revolving fund.--A revolving fund is generally used where the city has determined that it will pay for the cost of excess extensions and will charge intervening property appropriate amounts with which to replenish the fund. Naturally, if property does not develop as anticipated, the fund must be replenished from other sources. In Los Angeles County, the costs of sewer lines through unimproved areas are paid from a revolving fund. The amount of the charge for each lot is calculated in advance and, at the time of tap-on, this charge is collected together with an additional twenty per cent of the charge. The additional twenty per cent is treated as a "carrying expense" charge.

The City of Los Angeles also has a revolving fund from which it pays the cost of sewer extensions through undeveloped property.

The City of Santa Clara, California, operates a revolving fund from which payments are made for water and sewer lines which extend through land as yet undeveloped. The fund is replenished from charges which are collected at the time individual lots are connected to the facility. Santa Clara employs a unique method for collecting these charges. A lien is established against all property which will be subject to benefit from installation of the utility lines. A formal lien resolution is enacted. It establishes a

legal claim against the land which must be paid before the property owner is allowed to connect to the water or sewer line. City Manager Loyd Brady commented on this feature of the system:

> We feel that one of the most valuable things accomplished by this policy program is a method of collecting improvement costs from 'intervening property' without having to resort to the cumbersome special assessment procedure. This is probably the only really new innovation.
>
> Of course, a sizeable 'revolving fund' is required initially because recovery is not made until a building permit is requested for developing the property and/or a permit to connect to the facilities. But the fund does 'revolve' (13).

Special refund accounting.--Where charges are made against one group of property owners and the resulting income will subsequently be disbursed to others, an accounting system must be devised. The North Carolina Institute of Government reported that in those cities which make reimbursements, "these funds are channeled through the city."

Regardless of the particular method by which funds are collected and disbursed, the paramount consideration is that an entirely separate fund be maintained and its integrity remain intact.

Summary

The methods by which a municipality makes provisions for utility extensions to outlying subdivisions will influence the location of subdivision activity. In considering the location of these utility lines, the municipality must take into account its obligation to continue and maintain utility service once it is initially established. It is also necessary that the city possess administrative

authority throughout the area under consideration.

Water and sewer extensions to outlying subdivisions are financed by one of three main methods:

The city pays the cost;

The developer pays the cost;

The developer or the city pays the cost initially and may be partially or wholly reimbursed from charges made to intervening property.

If the city is to adopt a policy for reimbursement to the original developer, it is mandatory that it be placed in effect by written contract and that it be reasonable in its operation. Reimbursement policies in existence apparently are unanimous in making the original developer of the outlying subdivision the beneficiary of refunds. This may or may not be proper.

The determination of the portion of the cost of utility extensions subject to reimbursement may be made in a number of ways. One method is to treat the cost of the entire length of the utility extension to the property line of the subdivision as being subject to reimbursement. Another method provides for reimbursement of only a percentage of this cost, thereby assuring that the outlying developer pays some portion of the cost. Still another method for determining the amount to be reimbursed, credits the developer for a portion of the extension cost based on a unit figure for each utility customer the line will serve. The remaining cost of the line is then paid by the developer and subject to refund.

A variety of bases are suggested for apportioning charges to intervening property. These include the following bases:

A portion of total development potential;

Land area;

Front footage;

Service connections;

Assessed property values; and

Percentage of utility revenue derived from the area.

Three methods of collecting and disbursing funds are the establishment of:

Special assessment districts;

Revolving fund;

Special refund accounting.

The special assessment district may prove a satisfactory method provided the area is not too large. It may prove difficult to administer, however, if it involves a large area of undeveloped land. A revolving fund can be used to good advantage where the city bears the cost of utility extensions. Provisions should be made, however, for possible shrinkage of the fund in the event development does not take place as anticipated.

Where charges are to be collected from one group of property owners and the resulting income will subsequently be disbursed to others, it is mandatory that a rigid accounting system is used which will insure the integrity of the fund.

Reimbursement policies governing utility extensions are presently in an experimental stage. As more experience is gained in their application other municipalities may be assisted in arriving at their own solution to the problem.

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CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

The methods by which municipalities are meeting the problems of oversized capacity and utility extensions should be examined by those interested in setting their own policy. This chapter will summarize the major findings of this study of prevailing municipal policy, and will present a series of recommendations for consideration.

Conclusions

Municipal policy governing the provisions for oversized capacity of utility lines within residential subdivisions and for utility extensions to outlying subdivisions is generally not well formulated. Where policy for oversized capacity in water and sewer lines has been expressed, the municipality usually assumes the costs. If subdivision activity is great, this policy may require more public funds than can readily be made available for this purpose. If so, the policy will have to be either modified or abandoned. Suggestions for policy modification will be presented in the section on recommendations.

The problem of extending water and sewer lines to outlying subdivisions is usually resolved by the municipality's either assuming the costs or requiring that the subdivider do so. In an attempt to lessen capital investment or to distribute the costs of development more equitably, some communities have established procedures under

which intervening property owners reimburse the city or the subdivider for at least a portion of the costs of the water and sewer extensions. The most common method by which this is carried out is a contract with the developer of an outlying subdivision under which he is reimbursed from charges made by the city to intervening property as it develops and makes use of the utility lines. The bases on which these charges are made may take many forms but the most common methods are those which have traditionally been used in special assessment districts: namely on the basis of front footage, land area, or a combination of the two.

While reimbursement contracts are not usually specifically authorized in enabling legislation, the states of Indiana and Washington have adopted specific legislation authorizing municipalities to enter into such contracts with land developers. Prevailing court opinion indicates that, whether or not there is specific enabling legislation, a formal reimbursement contract is required in order to establish the rights of the subdivider.

Recommendations

A definite policy governing oversized capacity in water and sewer lines and extensions of these lines to outlying subdivisions should be considered by every municipality for one or more of the following reasons:

To assure fair treatment among present and future utility customers;

To prevent ill-advised or excessive expansion or extensions;

To prevent the installation of lines of inadequate size which the municipality may later have to replace;

To provide a method of control over the location and extent of land subdivision activity.

Since the policy the community adopts will affect the future service areas of two of the basic requisites of modern urban growth--water and sewerage--municipal policy should be considered as a part of total land policy, and not as a simple matter of the adjustment of costs based on the expediencies or economics of land subdivision.

A city which desires to formulate a policy on these two problems of excess capacity and extensions across undeveloped property should seek as its objective a method which will achieve control over land subdivision and which will be equitable in its operation.

In the following section, two alternative policies will be outlined. The first alternative will require specific studies which must be made prior to the time that policy is adopted.

Alternative Policy No. 1

In order to implement alternative policy no. 1, a planning program must be in operation.

> The purpose of planning is to provide the information and expert advice necessary to insure that priority will be given to projects in the order of their importance and that all governmental functions will be carried on in the best possible relationship to each other.
>
> The overall objective of any urban planning program should be to direct the development of the community in an intelligent and orderly manner according to a preconceived plan (1).

Existing and future land-use studies.--The first step in the planning program is the preparation of maps and plans showing existing and future land use for the planning area. The future land-use plan should include a map on which will be indicated land required in the future for:

Commercial areas;

Industrial areas;

Residential areas;

School of park sites;

Public and semi-public building sites; and

Sites for other community purposes.

The future land-use plan should show the location of different uses and the density at which the different portions of the residential areas should be developed.

Plan of expansion.--After the city has prepared reasonable predictions for the location and density of residential development, it is then necessary that a plan of expansion for the planning area be prepared.

This procedure has been outlined as a technique to be used in the location and timing of subdivision activity (2). The plan should include a map and a text. The objective of such a plan is to determine the areas which the municipality can provide with services in the ensuing years. The affected agencies of the municipality, including the planning commission, the utility departments, parks and recreation department, school board, and public-works department, would be required to help formulate this plan. After taking inventory of existing

facilities and considering their plans for future improvements, each agency would indicate on a map the areas it will be able to serve at various periods in the future.

Capital expenditures budget.--A capital expenditures budget is a necessary element in determining which areas will be provided with services and at what period of time. A capital expenditures budget is normally prepared for a period of six years in the future. This is a time period within which realistic goals can be established. The municipal departments, in the capital budget, predict for the next six years where they can extend services and make improvements. They can thus delineate by years the areas within which they proposed to expend available funds. These areas should be outlined on a map by each municipal agency concerned. Each of the individual maps prepared by the various agencies could then be combined to form one master map which would form the basis for residential expansion of the community and the surrounding area.

Order of development priority.--The next step in giving meaning to the community's plan of expansion would be to develop an order of priority for individual residential areas. Such order would naturally be subject to review and change as conditions change and as actual development takes place. The order of priority may be determined by an analysis of the capital budget proposals of individual departments. The land required for residential purposes in the future may be classified in three broad categories:

1. Areas which are now provided with all municipal services or can be provided within the current year.
2. Areas which the community expects to provide with services within the foreseeable future (the time limit of the capital expenditures budget--usually six years.)
3. Areas which can be provided with only a few or no municipal services within the capital-budget period.

The community's policy governing provisions for oversized capacity and utility extensions may be related to the above three areas in the following manner.

The areas with the highest priority are those areas which have been determined as ready for immediate development. These areas can be provided with all municipal services during the current year. Municipal policy should be designed, therefore, to encourage residential growth in these areas. The municipality should provide the funds that are needed to pay the costs of oversized capacity or extensions of water and sewer lines in these areas.

The areas which have been designated as having an intermediate priority for development are those areas in which municipal services will be provided within the period of the capital-expenditures budget. City officials should advise prospective subdividers of land within the intermediate priority area that it plans to furnish municipal services within the year designated on the master map for residential expansion. The subdivider should be informed that if he desires to subdivide land prior to that time, he may do so and will be reimbursed by the city for

excess capacity and extensions required in the year in which the area is raised to the highest order of development priority. As subsequent development occurs, it should be charged a proportionate amount for the excess costs which would then be refunded to the original developer. When the year arrives in which the city has planned and budgeted funds for municipal services within the area, the city would make its normal appropriation for capital items and at that time reimburse any developer who has an excess investment in utility capacity. After this date, no further charges would be made to subsequent subdividers.

The areas with the lowest priority for residential development will be those which are not scheduled for municipal services within any definite time period. Since the city's plans do not include the service of these areas with utilities in the foreseeable future, it should discourage development.

In the low-priority area the developer should be required to provide oversized capacity as needed. The city should not reimburse him for the excess costs involved. The developer must therefore calculate the excess costs as part of the costs of development. This should prove to be a positive deterrent to subdivision activity within this area.

Where water and sewer lines are to be extended to outlying subdivisions which lie within the low-priority area, the original developer should be required to pay not only for such lines but also for any additional facilities such as pumping stations, pressure tanks, or lift stations, that might be required--all with no provision for

reimbursement. This policy is likely to be a deterrent to the creation of a new subdivision in an outlying area. However, once a water and sewer line has been laid through undeveloped property which has a low priority for utility service, a continuing restraint over development is required. The succeeding subdividers should be required to pay the cost of the extension to his subdivision. This charge will be reimbursed to the original subdivider. The city, itself, will provide no reimbursement from public funds.

Alternative Policy No. 2

The following is an alternative policy which may prove simpler to place into effect and to administer. This alternative policy will probably accomplish the same objective of controlling land subdivision and distributing the costs of development equitably.

Under this alternative the municipality would require the subdivider to pay the excess costs of oversized capacity or for utility extensions to outlying subdivisions. These costs would be paid at the time of the initial development of the subdivision. A reimbursement contract would be provided under which the subdivider is reimbursed as connections are made on a predetermined basis such as the one suggested in the low-priority area of alternative no. 1. The reimbursement period should be over a limited period of years--perhaps not more than five years.

This arrangement would deter subdivision activity in areas that are not "ripe" for development because of the uncertainty that the

initial subdivider would be able to recoup the outlays he is required to make for excess capacity and extensions.

Summary of Recommendations

Of two alternative methods of meeting the problems of over-sized capacity and utility extensions, the first method is complex and involves a determination of areas of development priority. The second alternative policy could be effectively used and might accomplish the same objective of deterring development in outlying areas. Whatever policy the community adopts should be used in conjunction with other methods of land subdivision control. Such policy should always be considered in the light of the community's policy toward all land development, which,

> . . . like its policy with respect to any other resource, should be designed to complement its <u>total</u> policy--that is, designed to further to the utmost the efforts of its people to secure for themselves all of the basic values for which the community exists (3).

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APPENDIX A

AN ACT TO AMEND SECTION 93 OF AN ACT ENTITLED
"AN ACT CONCERNING MUNICIPAL CORPORATIONS"
APPROVED MARCH 6, 1905

Be it enacted by the General Assembly of the State of Indiana:

Section 1 Section 93 of the above entitled Act is hereby amended to read as follows: SECTION 93. The Board of Public Works shall have power .....

To contract with owners of real estate for the construction of storm, sanitary or combination sewers, pumping stations and disposal plants within such city or within four (4) miles from its corporate limits, connecting with the public sewerage system, to serve the area in which the real estate of such owners is located and to provide, for a period of not to exceed fifteen (15) years, for the reimbursement of such owners and their assigns, by any owner of real estate who did not contribute to the original cost of such sewers, pumping stations, or disposal plants, and who subsequently taps into or uses the same or deposits sewage therein, of a fair pro rata share of the cost of the construction of said sewers and facilities, including not only direct users but also users on any laterial sewers connecting thereto, subject to such reasonable rules and regulations as the Board may provide or contract, and notwithstanding the provisions of any other law; provided, however, that such provisions of such contract shall not be effective as to any owner of real estate not a party thereto, unless such contract shall have been recorded in the office of the Recorder of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said sewers and facilities. The power of the Board to so contract shall also apply to such sewers and facilities now in process of construction or which have not been finally approved or accepted for full maintenance and operation by such city upon the effective date of this Act.

Any such contract so executed may include as part of the consideration running to the city, the release of the right of the owners party thereto and their successors in title, to remonstrate against pending or future annexation to the city of the area served by said sewers and facilities, and any person tapping into or connecting to such sewers and facilities so contracted shall be deemed to thereby waive their right to remonstrate against the annexation of the area served by such sewer and facilities.

Upon the completion of said sewers and facilities, the Board shall be authorized to approve their construction and accept sewage from

said sewers and facilities subject to such sewage rates as such city may duly establish, and if any such sewer lines and facilities are so approved and sewage is so accepted, all further maintenance and operation costs of said sewer lines and facilities shall be borne by such city.

No person, firm or corporation shall be granted a permit or be authorized to tap into, use or deposit sewage into any such sewers and facilities or extensions thereof, during the period of time prescribed in such contract without first paying to the city, in addition to any and all other costs and charges made or assessed for such tap, use or deposit, or for the sewers constructed in connection therewith, the amount required by the provisions of the contract under which the sewers and facilities so tapped into, used or deposited in were constructed. All amounts so received by the city shall be paid out by it, without appropriation, under the terms of such contract within sixty (60) days of the receipt of same. Whenever any tap or connection is made into any such contracted sewers and facilities without such payment having first been made, the Board shall remove or cause to be removed such unauthorized tap or connection and all connecting tile located in the sewer and facility right-of-way and dispose of unauthorized materials so removed without any liability whatsoever on the part of such city.

Whenever the cost or any part thereof, of any sewer improvement, whether local or general, storm, sanitary, combination, or otherwise, is or will be assessed against the owners of real estate and such sewer will be connected into contracted sewer lines, pumping stations or disposal plants, constructed under the provisions of this section of this Act and to the cost of which such owners or any of them did not contribute, there shall be included in the engineer's estimate submitted to the Board before the hearing on any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided in or computed from such contract as the fair pro rate share due from such owners upon and for such contracted sewer lines, pumping stations and disposal plants. In the event any such owner shall elect to pay such assessment by installments in anticipation of which bonds and coupons are issued, the amount of such bonds and coupons shall be for the entire amount of such assessment, including such fair pro rata share of the cost of such contracted sewer lines and facilities; provided, however, that any owner may elect to pay such fair pro rata share in cash within sixty (60) days after such assessment is final and to pay the remainder of such assessment in installments.

* * * * *

APPENDIX B

AGREEMENT*

FOR MUNICIPALITIES TO REIMBURSE DEVELOPERS
FOR COSTS OF UTILITY INSTALLATION
(Tentative Draft)

This agreement, made this _____ day of _____ 19__, between the Town of _____, a municipal corporation of the fourth class organized under the laws of the state of Washington, hereinafter referred to as the Party of the First Part, and the _____ (developer) (a person, partnership, corporation, or other entity) organized under the laws of the state of Washington, and the Party of the Second Part, pursuant to Chapter 261 of the Laws of 1959 (H.B. 682), WITNESSETH:

I. Definition: Utility Project (Define).

II. The First Party agrees to:

1. Accept, at the time the construction of (Insert whichever is applicable: i.e. storm, sanitary or comination sewers, pumping station, disposal plants, water mains, hydrants, or appurtenances) is completed, and is approved by First Party, in accordance with the standards of installation and under the supervision of the town engineer, the utility as a public facility from the Second Party, and shall maintain, manage, and operate it;

2. Provide the Second Party with standards for the design, construction, installation of the utility;

3. Provide the Second Party with municipal engineering supervision of the installation and construction of the utility project;

4. Collect from owners of such real property whose properties will benefit from the improvement, and who have not contributed to the original cost of the installation of the utility, and who subsequently tap on to or use the same, a fair pro rata share of the cost of construction of _____, including users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the town council may provide.

5. Collect other revenues, derived through special assessments, local improvement districts which are assigned to the payment for the utility project herein described;

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*The agreement could be drafted so as to make it applicable to water or sewer facilities in the process of construction.

6. Pay to the Second Party within sixty days from the receipt thereof, as the revenues for such payments are received by the First Party:

7. Make such payments to the Second Party as revenues are obtained for a period of time, not to exceed fifteen years, which fifteen year period shall commence on _____.

III. The Second Party agrees to:

1. Provide the First Party with a performance bond made payable to the Town of _____, and to assure First Party that the utility project, as herein described, will be completed within ____ days, in accordance with the applicable standards of utility installation and under the supervision of the town engineer;

2. Have engineering drawings prepared by a registered engineer; detailing designing, and specifying the materials for the installation of the utility project as specified herein:

3. Obtain approval of the engineering drawings and plans from the town engineer;

4. Follow the engineering drawings and plans and specifications in the process of installing the utility project, and obtain approval in writing from the town engineer of any modification in the drawings or plans before continuing with the utility project;

5. Have the town engineer supervise and inspect the installation, and notify the town engineer of the progress of construction once during each _____ period; revise, revamp, and modify the installation requirements as set forth by the town engineer from time to time in respect to installation and construction pursuant to the engineering plans and specifications;

6. Include in the total cost of the project the cost of the time devoted by the town engineer in supervision of the project, plus the costs of transportation to, and from, the headquarters of the town engineer, and such other municipal costs incident to the project;

7. Provide the First Party, upon completion of the project, with a copy of the final plan representing precisely the nature and engineering character of the installation, and with a copy of a breakdown in the costs of the project by each 500 feet of installation, to provide the First Party with a permanent record that might be used for further policy decisions which may be made in respect to future connections, credits and debits against future assessments, local improvement districts, and/or issuance of revenue bonds;

8. Provide the First Party every sixty days, hereafter until all deferred payments are made, for a period of time not to exceed 15 years, which 15 year period shall commence on _____ with a statement showing the name of the person, partnership, corporation, or other legal entity, or its assignees, to which the deferred payments shall be made, legally, when collected and obtained from various revenues;

9. Agrees to provide the First Party with a statement after the said 15 year period has expired that the First Party has fulfilled its contractual obligations, in accordance with the provisions of this agreement, and that no further payments shall be made; and that the terms of the agreement have been satisfied.

IV. The contents of this agreement shall not be construed to represent a responsibility on the part of either party greater or less than that which is required to complete and finance the utility project as described, to wit:

In witness hereof, the Parties of this agreement have affixed their signatures this ____ day of _____, 19___, under authority granted that person representing the First Party as established by appropriate action of the town council of _____, and under the authority granted the Second Party as established by appropriate action of the person, partnership, or corporation, or other entity which he represents.

The First Party, the Town of_____

by_____
Mayor

by_____
Town Clerk

Approved as to form_____
Town Attorney

The Second Party_____

_____

_____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, A.D., 19 , before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, who acknowledged himself to be _____ of _____ a corporation, and that he as such _____ executed the within and foregoing instrument, and acknowledged the same to be the free and voluntary act and deed of said corporation, for the use and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed thereto is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and official seal, the day and year first above written.

My commission expires:

_____
Notary Public in and for the State of Washington, residing at Seattle

_____
(Seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, A.D., 19 , before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be _____, that executed the within and foregoing instrument for _____, and acknowledged the said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned, and _____ on oath stated that he was authorized to execute said instrument.

In witness whereof, I have hereto set my hand and affixed my official seal, the day and year first above written.

My commission expires:

_____
Notary Public in and for the State of Washington, residing at Seattle

_____
(Seal)

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